It appeared to me from all the correspondence that a contract had been concluded as a result of which the plaintiffs shipped the goods in question on November 4th. In their letter of 25th October at Ex. A1 to Mr. Chan's affidavit the defendants said,

"With regard to the additional offer of 150 sets 6104 referred to in your above cable, we had requested you that we are willing to take this quantity at DM.190 per set C&F on 90 days D/A basis as the other exporters from Bremen are supplying us these as DM.188 against L/C basis.

Should this be acceptable to you, you may ship either the total quantity or 50 sets only and confirm to us by a short cable immediately."

At Ex. C to the defendants' affidavit, the plaintiffs informed the defendants as follows on 1st November, 1971 in reply to the defendants' letter of 25th October, 1971 at Ex. A1 above,

"In the meantime we could obtain further 100 pcs. of N.6104, so that we could comply with your request to ship further 150 pcs. of N.6104 against 90 days D/A terms. Shipment of these 150 pcs. will be made as well with M/s. 'Karl Marx' on Nov. 4th. Enclosed please find our order confirmation and Prov. Inv. With this lot all our stocks of N.6104 have been cleared."

I found that the defendants had given clear authority to the plaintiffs to ship either 150 pieces or 50 pieces against 90 days D/A terms and that by shipping 150 pieces on November 4th 1971 the plaintiffs concluded the contract between the parties leaving no other term or condition to be agreed whether as to price or the number of pieces to be shipped.

The defendants contended that they did not order these goods nor that they agreed the price of DM.190 on 90 days D/A basis for the same. They complained that the said goods were shipped without their confirmation.

I carefully considered the last paragraph of Ex. A5 to see whether their complaint was well-founded. In that paragraph the defendants said, "should this be acceptable to you, you may ship either the total quantity or 50 sets only and confirm to us by a short cable immediately." They did not say, "Inform us by cable whether you accept these terms before you ship either 150 or 50 sets in order that we can confirm our acceptance of your acceptance of our terms as to the price and the exact number of sets you will be shipping." It is true that the plaintiffs did not send a short cable immediately saying, "Your terms accepted, shipping 150 sets Nov. 4th." They shipped the goods on November, 4th. By doing so, they clearly signified their acceptance of the terms imposed by the defendants and appropriated the 150 sets to the contract as empowered by the defendants who left it to their descretion to ship *either* the total quantity of 150 sets or 50 sets only. For all these reasons, it seemed to me that the plaintiffs had an unassailable case against the defendants on the bill of exchange in question which the defendants clearly accepted unequivocably albeit an attempt was made by them to vary the terms of their contract unilaterally by means of their letter of 17th December 1971 at Ex. G.

I accordingly allowed the appeal in favour of the plaintiffs.

Appeal allowed.

Solicitors: *Shook Lin & Bok; G. Murugaiyan.*

EVELYN TAN v. TAN LIM TAI

[O.C.J. (Winslow J.) August 17, 1973]

[Singapore — Originating Summons No. 75 of 1973]

Family Law — Husband and wife — Property purchased in the name of husband — Substantial financial contributions by wife — Property sold at a profit — Claim by wife for share in profits — Women's Charter, (Cap. 47), s. 55.

The plaintiff who had been living separately from the defendant, her husband, since 1970 applied for a share in the proceeds of sale of the matrimonial home. The property was purchased in the name of the husband in 1960 for $19,500 and sold for $46,000 in 1971. The plaintiff claimed that she had made substantial financial contributions towards the purchase of the house.

Held: (1) on the facts of the case the plaintiff had made substantial financial contributions towards the acquisition of the joint matrimonial house in circumstances which justified the conclusion that it was the common intention of both spouses that they should share the house at least in equal shares even though the conveyance was made in the name of the husband alone;

(2) on the evidence the court could draw an inference of a trust and therefore the plaintiff was entitled to claim a share in the proceeds of sale of the matrimonial home.

Cases referred to:-

(1) *Wachtel* v. *Wachtel* [1973] 3 W.L.R. 375.

(2) *Pettitt* v. *Pettitt* [1970] A.C. 777.

(3) *Gissing* v. *Gissing* [1970] 3 W.L.R. 265.

(4) *Cowcher* v. *Cowcher* [1972] 1 W.L.R. 425.

ORIGINATING SUMMONS.

Joshua Lim (Assistant Director of Legal Aid) for the plaintiff.

Ho Ung Tuck for the defendant.

Winslow J.: By this originating summons, the plaintiff/wife who has been living separately from the defendant/husband since 1970, seeks a determination by the court under section 55 of the Women's Charter (Cap. 47) that she is entitled to a half-share in the proceeds of sale of the matrimonial home at No. 1 Tham Soong Avenue, Singapore.

This property was purchased in the name of the husband on 1st April 1960 for $19,500 and sold for $46,000 in 1971. A down-payment of $4,600 was originally made leaving a balance of $14,900 to be repaid by monthly instalments of $127.90 over 15 years on a loan from the Malaya Borneo Building Society which held a mortgage on the property until it was sold in 1971 after redemption. According to Ex. "TLT 1" filed with the defendant's affidavit of 11th April 1973, outgoings by way of redemption monies, solicitors' costs and commission amounting to $5,281.41 were paid out of the proceeds of sale leaving approximately $40,800 as the proceeds available for division between the parties should I decide that the wife is entitled to a share therein. As I said at the conclusion of the hearing on 21st June 1973 I had no doubt then that she was so entitled, the only question on which I reserved judgment being the quantum of that share.

The husband gave his mother $9,000 out of this balance on the basis that that was the amount he claims he received from her towards the purchase of the house and for improvement (including furniture and chinaware which she has recovered). Be that as it

may, only that part of it relating to actual purchase of the house and capital improvements should be borne by the beneficial owner or owners. It is conceded by the wife that the mother made an initial contribution of $6,000. I find on the evidence that $7,500 and not $9,000 should be borne by the owner or owners and that this sum should be deducted in the final accounting on the basis that it was a loan to the beneficial owner or owners of the house. The mother said that she advanced additionally sums of money to him to indulge his penchant for cars and other activities amounting to $4,000 or $5,000. She reluctantly agreed that he was a spendthrift. These sums of money like expenditure on furniture etc. have nothing to do with the value of the house itself.

It is undisputed that the wife handed over her whole pay packet every month to her husband from November 1958 onwards soon after their marriage until according to her, she was forced to leave the matrimonial home and live separately from him at the end of December 1970. Her pay ranged from $200 p.m. in 1960 to $345 in 1970 as a clerk with the Ministry of Education. He is a schoolmaster in Government Service whose salary ranged from $560 p.m. in 1960 to $900 p.m. in 1970. Out of her pay packet he returned $20 to $30 p.m. to her as pocket-money and claimed that he spent some $10 p.m. himself on her clothing and another $40 on cosmetics, transport, etc. He otherwise maintained her somewhat frugally at a cost of about $80 p.m. on her food from the common pool of their joint earnings less what he paid her as pocket money until 1961 when his mother came to live with them.

She struck me as being a simple, thrifty, homely and uncomplaining kind of wife without any pretensions to glamour or luxury or a way of living inconsistent with her own earnings had she lived as a single woman. She was however married and she entrusted her whole pay packet to her husband although he could have maintained her on his own salary without aid from her income. Additionally, she made various purchases towards the maintenance of comfort in the matrimonial home. She also provided him with some money after pawning her jewellery. I am not, however, taking these additional expenses into account in assessing her contribution towards the purchase of the house itself as many of them concern moveable property. It seems only right that like the mother's expenses on furniture these amounts should be ignored.

I accept the wife as a truthful witness whose evidence I accept substantially. I cannot say the same about the husband who was evasive, contradictory and reluctant to give credit where credit was obviously due to any contribution by his wife towards the purchase of the matrimonial home. He claimed that she "thrust" her pay packet on him. He even said that he had spent her pay packet on luxuries for both of them. I do not find on the facts that he spent her money on any extraordinary luxuries for her. It would be more correct to say that he gave her little more than the bare necessities of life even with the aid of her own pay packet quite apart from his duty as a husband to maintain her out of his own earnings which he was able to do. It must have come as a big surprise to him that his wife's counsel was so well-informed about his enthusiasm for motor cars, which at first he denied, until confronted with details of the various cars he had owned in the past. Even his own mother agreed that he was a spendthrift and I have no reason to doubt his wife's version that he was stingy so far as she was concerned and provided her with few of the normal social amenities accorded to wives of men of his station in life to relieve the drudgery of a humdrum existence to which he consigned her.

I accept her evidence as against his that she gave her pay packet to him because they both wanted to buy a house, that they discussed the purchase after he had shown her the building site in question in early 1959, that he told her that she must cooperate with him and suggested she should give him her pay packet every month whilst he would also put his money in. I am satisfied that he told her in no uncertain terms that they should both cooperate with one another and save money towards the purchase of the house which was to be theirs.

As she said, "He wanted me to pay for our house. The money went because of the house — not for anything else like luxuries." This I accept.

I now turn to the law. Section 55 of the Women's Charter corresponds to section 17 of the Married Women's Property Act, 1882 of England. In England, of course, there have been considerable changes in the law as a result of the enactment of the Matrimonial Proceedings and Property Act, 1970 and in particular, section 5 thereof. We have no corresponding equivalent here of such a provision.

What Lord Denning, delivering the judgment of the Court of Appeal, said in *Wachtel* v. *Wachtel*[1] to the following effect does not therefore apply with full force here. This is what he said: —

> "In the light thus thrown on the reason for subsection (1) (f), we may take it that Parliament recognised that the wife who looks after the home and family contributes as much to the family assets as the wife who goes out to work. The one contributes in kind. The other in money or money's worth. If the court comes to the conclusion that the home has been acquired and maintained by the joint efforts of both, then when the marriage breaks down, it should be regarded as the joint property of both of them, no matter in whose name it stands. Just as the wife who makes substantial money contributions usually gets a share, so should the wife who looks after the home and cares for the family for 20 years or more."

Lord Denning was of course referring to the enactment of the legislation aforesaid whereby Parliament intervened to remedy the injustice occasioned by the view taken by the courts of the wife's position as set out by Lord Hodson in *Pettitt* v. *Pettitt*[2] at page 811 as follows: —

> "I do not myself see how one can correct the imbalance which may be found to exist in property rights as between husband and wife without legislation."

As I have said, the United Kingdom Parliament enacted the necessary legislation.

Although this legislation has no application in Singapore, I am referring to it to show the difference it can make in the case of a wife in Singapore as the law now stands. I am informed from the Bar that no case like this has arisen for decision either

in Singapore or in Malaysia before or that, at least, there is no reported decision which would be of any assistance to me. As Lord Denning said in the same case at page 374:

"Twenty-five years ago, if the matrimonial home stood in the husband's name, it was taken to belong to him entirely, both in law and in equity. The wife did not get a proprietary interest in it simply because she helped him buy it or to pay the mortgage instalments. Any money that she gave him for these purposes would be regarded as gifts, or, at any rate, not recoverable by her: see *Balfour* v. *Balfour* [1919] 2 K.B. 571. But by a long line of cases, starting with *In re Rogers' Question* [1948] 1 All E.R. 328 and ending with *Hazell* v. *Hazell* [1972] 1 W.L.R. 301, it has been held by this court that, if a wife contributes directly or indirectly, in money or money's worth, to the initial deposit or to the mortgage instalments, she gets an interest proportionate to her contribution. In some cases it is a half-share. In others less.

The court never succeeded, however, in getting a wife a share in the house by reason of her other contributions: other, that is, than her financial contributions. The injustice to her has often been pointed out."

Lord Pearson had the following to say in the House of Lords in *Gissing* v. *Gissing*[3] where a wife, having divorced her husband, claimed a partial beneficial interest in the matrimonial home in which the husband had the legal estate at the time of purchase: —

"I think it must often be artificial to search for an agreement made between husband and wife as to their respective ownership rights in property used by both of them while they are living together. In most cases they are unlikely to enter into negotiations or conclude contracts or even make agreements. The arrangements which they make are likely to be lacking in the precision and finality which an agreement would be expected to have. On the other hand an intention can be imputed: it can be inferred from the evidence of their conduct and the surrounding circumstances. The starting-point in a case where substantial contributions are proved to have been made is the presumption of a resulting trust, though it may be displaced by rebutting evidence. It may be said that the imputed intent does not differ very much from an implied agreement. Accepting that, I still think it is better to approach the question through the doctrine of resulting trusts rather than through contract law. Of course if an agreement can be proved it is the best evidence of intention."

It will be seen that the question really turns on whether a court is satisfied on the evidence that it can draw an inference of a trust from the conduct of the parties and the surrounding circumstances even though the parties themselves have made no precise agreement about their respective shares.

As Viscount Dilhorne in the same case at page 262 said: —

"Where there was a common intention at the time of the acquisition of the house that the beneficial interest in it should be shared, it would be a breach of faith by the spouse in whose name the legal estate was vested to fail to give effect to that intention and the other spouse will be held entitled to a share in the beneficial interest.

The difficulty where the dispute is between former spouses arises with regard to proof of the existence of any such common intention. It may be, as in this case, that the claim to a share in the beneficial interest is not made until years after the acquisition of the property. It is most likely that there will be no documentary evidence pointing to the existence of any such intention.

In a great many cases, perhaps in the vast majority, no consideration will have been given by the parties to the marriage to the question of beneficial ownership of the matrimonial home at the time that it is being acquired. If, on the evidence, that appears to have been the case, then a claim based upon the existence of such an intention at the time must fail."

Both *Pettitt* v. *Pettitt* and *Gissing* v. *Gissing* which preceded the 1970 legislation aforesaid were dealt with in some detail by Bagnall J. in *Cowcher* v. *Cowcher*[4] which was a case involving a claim under section 17 of the Married Women's Property Act 1882. Bagnall J. concluded his judgment with the following admirable observation: —

"The purchase of a matrimonial home cannot be accomplished without professional advice and assistance. In dealing with the purchase solicitors make many common form inquiries dealing with such matters as planning, registration of charges, and so forth. Though it is not for me to dictate such matters, I think that it would be desirable, also as a matter of common form, that they should make specific inquiries of the spouses of their intentions as to beneficial ownership. The just resolution of future disputes would be facilitated; the additional costs would be insignificant; and I cannot think that connubial harmony would be unduly jeopardised."

I should add that *Pettitt* v. *Pettitt* and *Gissing* v. *Gissing* were, of course, cases involving property disputes such as the one before me between husband and wife. In each case, however, at the time of the determination of the dispute in question the marriage between the parties had already been dissolved, whereas the parties in the present case are still married though living apart. So far as I am aware no proceedings have been commenced by either for dissolution of such marriage. The remedy under section 17 (like section 55 of our Women's Charter) however is available, as Lord Diplock said at page 820 in the *Gissing* case, both while husband and wife are living together as well as when the marriage has broken up, though, generally, such questions are raised only after such a break-up. This section does not however empower the court to create any proprietary rights over the property in dispute which were not already in existence. In this respect it provides a simplified procedure in the case of disputes over property as between husband and wife but makes no alteration to the principles which apply generally as they do in the case of disputes between parties who are not spouses. Historically, therefore, this section stems from the recognition accorded to a married woman's right to own her own separate property.

To summarise, the legal basis for the decision in *Gissing* v. *Gissing* is that a matrimonial home in the name of one spouse alone is nevertheless held to belong to both by virtue of a trust which can be imputed to the parties from their conduct and the surrounding circumstances. Such an inference can be made where each has made a substantial financial contribution towards its purchase, whether such contributions are made directly or indirectly as contributions towards the purchase moneys or mortgage instalments due thereon. Such an inference of a trust can exist independently of an agreement as such though, of course, an agreement would be the best evidence of their intentions.

No such inference can be made where such contributions are not substantial and, on the facts, *Gissing's* case was so decided. The parties will, where such an inference is drawn, not necessarily hold in equal shares, because the quantum of the actual monetary contributions made by each spouse towards the purchase of the matrimonial home will be a valuable guide to their intentions as to the proportions in which

the property should, in fact, be shared in the absence of any precise agreement.

On the facts which I have found it is clear that the plaintiff made a substantial financial contribution towards the acquisition of the joint matrimonial home in circumstances which are peculiar to this case at least and which justify the conclusion that it was the common intention of both spouses that they should share the house at least in equal shares even though the conveyance was taken in the name of the husband alone.

As I have earlier stated, I accept her evidence that the husband asked her to make over her monthly salary to him to enable this purpose to be effected even though her monetary contributions to the family expenses as a whole may have exceeded the value of a half-share in the house. In the early days of their marriage, however, they had to rely on financial assistance from his mother to the extent of about $7,500 towards deposit and initial capital improvements as I have earlier said and it is this amount and not $9,000 which should be deducted in the final computation of what sum remains due to each from the balance of the proceeds of sale less redemption monies, commission, costs etc. as set out in his affidavit of 11th April, 1973.

Prayer 1 claims an equal share in the house on her behalf and no more, in my view quite properly. I do not therefore have to consider whether she is entitled to any larger share. In fact, in his opening address, her counsel submitted that she was entitled to at least a one-third share. In his closing address however he contended that, as the husband was bound to maintain her out of his own earnings, her share should be one-half. Applying the principle, to which I have already referred, that the court does not create new rights but merely ascertains existing rights in the light of their intentions and/or agreement at the time of the acquisition of the property, it would in my view be correct to say that they then intended to share the property in equal shares.

Subject to what I have found as to allowable deductions from the total proceeds of sale, there will be an order in terms of prayer 1 with costs.

Order accordingly.

Solicitors: *Murphy & Dunbar.*

TAI TONG REALTY CO. (PTE) LTD. v. GALSTAUN & ANOR.

[C.A. (Wee Chong Jin C.J., Chua & Tan Ah Tah JJ.)
September 11, 1973]
[Singapore — Civil Appeal No. 20 of 1973]

Contract — Sale of land — Sale "subject to contract" — No agreement until formal contract signed.

The expression "subject to contract" is so well known and has acquired so definite a meaning in relation to sale of land that unless the facts and circumstances are so very strong and exceptional it's effect in law is that there is no binding contract of sale but a mere conditional contract of sale, the condition under the expression being that the parties agree to enter into another contract.

In this case the appeal against the decision of Choor Singh J. reported at p. 7 *ante.* was dismissed.

Case referred to:-

(1) *Von Hatzfeldt-Wildenburg* v. *Alexander* [1912] 1 Ch. 284.

COURT OF APPEAL.

K. A. O'Connor for the appellants.

K. E. Hilborne for the respondents.

Wee Chong Jin C.J. (delivering oral judgment of the Court): The appeal must be dismissed for the reasons which we now give. The facts are set out in the judgment of Mr. Justice Choor Singh. In substance the appellants were given an option by the respondents who owned the property known as No. 27 Tomlinson Road, to purchase that property. The option was given on the 31st July 1972 and was exercised in January 1973. It is a written option and the terms are set out in the document at pages 10 to 13 of the record of appeal. Now, the first of the "terms and conditions" in that written document states that "the sale is subject to contract". The expression "subject to contract" is so well known and has acquired so definite a meaning in relation to the sale of land that unless the facts and circumstances are so very strong and exceptional it's effect in law is that there is no binding contract of sale but a mere conditional contract of sale, the condition under that expression being that the parties agree to enter into another contract.

In *Von Hatzfeldt-Wildenburg* v. *Alexander*(1) at page 288 Parker J. as he then was, gave the now often quoted formulation of how the courts would construe that kind of expression such as "subject to contract" or "subject to formal contract" which has been accepted in all subsequent cases. Parker J. said —

"It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of a further contract is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract.... In the latter case there is a binding contract...."

If one considers the whole of this written document relied on by Mr. O'Connor there can be no doubt at all that there is no contract binding on the respondents to sell to the option holder who has exercised the option, the property stated in that option. It is said by Mr. O'Connor that the facts and circumstances in our particular case, particularly where it is a term of the option that the $2,000 deposit paid by the option holder to the grantor of the option is stated to be non-refundable in any event, are good grounds for the court construing the expression "subject to contract" as "being a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through". But when one looks at clause 4 of the written option, which says "the contract for the sale and purchase shall be executed within six weeks of the date of the exercise of this option" and at clause 5 which states "on the signing of the agreement for sale and purchase a further 10 per cent of the purchase price...", it becomes clear beyond a shadow of doubt that the